

SUBCOMMITTEE NO. 2

Agenda

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1:30 p.m.
Room 112

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Resources—Environmental Protection—Energy

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3460 Colorado River Board

Background. The Colorado River Board (CRB) of California was established in 1937 by State statute to protect California's rights and interests in the resources provided by the Colorado River and to represent California in discussions and negotiations regarding the Colorado River and its management.

Governor's Budget. The Governor's budget proposes \$1.2 million to support CRB in the budget year. This is approximately the same level of funding estimated for expenditure in the current year. In the current year, funding for this program was transferred so as to come exclusively from reimbursements from local water agencies.

Summary of Expenditures				
(dollars in thousands)	2004-05	2005-06	\$ Change	% Change
Type of Expenditure				
State Operations	\$1,224	\$1,237	\$13	1.1
Total	\$1,224	\$1,237	\$13	1.1
Funding Source				
General Fund	\$0	\$0	\$0	0.0
<i>Budget Act Total</i>	<i>0</i>	<i>0</i>	<i>0</i>	<i>0.0</i>
Reimbursements	1,224	1,237	13	1.1
Total	\$1,224	\$1,237	\$13	1.1

1. Lower Colorado Multi-Species Conservation Program— Informational Issue

Background. The board was recently involved in the development of one of the largest endangered species and habitat conservation plans to be adopted in the United States. This plan will lead to the restoration and maintenance of over 8,000 acres of native riparian, wetland, and aquatic habitats along the Lower Colorado River from Lake Mead to the Mexican border.

This conservation program will allow the state to divert 4.4 million acre feet (California's full entitlement) from the Colorado River.

The conservation program will ensure that the long-term needs of the federal and state endangered species act are met and maintained over the 50 year period of the program. The total cost of the program is estimated to be \$626 million over the 50 year implementation period. Approximately half of the funding will be provided by federal parties and the remaining half of the funding will be from non-federal parties. California parties will fund 50 percent of the non-

federal share with the remaining 50 percent being funded equally by Nevada and Arizona parties. No state funding is proposed to support this program.

3840 Delta Protection Commission

Background. The Delta Protection Commission (DPC) was created by statute in 1992 to develop a long-term resources management plan for land uses within the Sacramento-San Joaquin Delta. This plan is implemented by local governments in their land use planning processes. Broadly speaking, the main goal of the commission is to protect and enhance the overall quality of the Delta environment for agriculture, wildlife habitat, and recreational activities.

Governor's Budget. The Governor's budget proposes \$329,000 to support DPC in 2004-05. This is about the same level of funding as estimated for expenditures in the current year.

Summary of Expenditures				
(dollars in thousands)	2004-05	2005-06	\$ Change	% Change
Type of Expenditure				
State Operations	\$315	\$329	\$14	4.4
Total	\$315	\$329	\$14	4.4
Funding Source				
Environmental License Plate Fund	\$145	\$151	\$6	4.1
<i>Budget Act Total</i>	<i>145</i>	<i>151</i>	<i>6</i>	<i>4.1</i>
Harbors and Watercraft Revolving Fund	170	178	8	4.7
Total	\$315	\$329	\$14	4.4

Update. No issues have been raised with the commission's proposed budget for 2005-06.

3860 Department of Water Resources

Background. The Department of Water Resources (DWR) protects and manages California's water resources. In this capacity, the department maintains the State Water Resources Development System, including the State Water Project. The department also maintains public safety and prevents damage through flood control operations, supervision of dams, and water projects. The department is also a major implementing agency for the CALFED Bay-Delta Program, which is putting in place a long-term solution to water supply reliability, water quality, flood control, and fish and wildlife problems in the San Francisco Bay/Sacramento-San Joaquin Delta Estuary.

Additionally, the department's California Energy Resources Scheduling (CERS) division manages billions of dollars of long-term electricity contracts. The CERS division was created in 2001 during the state's energy crisis to procure electricity on behalf of the state's three largest investor owned utilities (IOUs). The CERS division continues to be financially responsible for the long-term contracts entered into by the department. (Funding for the contracts comes from ratepayer-supported bonds.) However, the IOUs manage the receipt and delivery of the energy procured by the contracts. (More on the CERS division of DWR is included in the Energy section of this report.)

Governor's Budget. The Governor's budget proposes \$6.4 billion for DWR in the budget year, which is about 4 percent less than estimated for expenditure in 2004-05. This reduction is due to a lower level of energy expenditures in the budget year. General Fund spending for the department is proposed at \$113 million, which is a 160 percent increase over the current year level. This large increase is due to an increase in funding to reimburse local governments for the lining of the All-American canal and augmentations to the department's flood management programs.

Summary of Expenditures (dollars in thousands)	2004-05	2005-06	\$ Change	% Change
Type of Expenditure				
California Water Plan	\$300,289	\$335,912	\$35,623	11.9
State Water Project Infrastructure	261,388	262,134	746	0.3
Public Safety and Prevention of Damage	76,869	93,269	16,400	21.3
Services	5,766	7,205	1,439	25.0
California Energy Resources Scheduling	5,671,248	5,339,741	-331,507	-5.8
Capital Outlay	308,686	319,354	10,668	3.5
Administration	63,700	63,700	0	0.0
<i>less distributed administration</i>	<i>-63,700</i>	<i>-63,700</i>	<i>0</i>	<i>0.0</i>
Loan Repayment Program	-4,013	-4,013	0	0.0
Unallocated Reduction	0	-576	-576	0.0
Total	\$6,620,233	\$6,353,026	-\$267,207	-4.0
Funding Source				
General Fund	\$43,029	\$112,951	\$69,922	162.5
Special Funds	9,785	9,857	72	0.7
Bond Funds	320,021	313,741	-6,280	-2.0
<i>Budget Act Total</i>	<i>372,835</i>	<i>436,549</i>	<i>63,714</i>	<i>17.1</i>
Federal Trust Fund	11,430	11,900	470	4.1
State Water Project Funds	528,176	533,731	5,555	1.1
DWR Electric Power Fund	5,670,759	5,339,741	-331,018	-5.8
Bosco-Keene Renewable Resources Investment Fund	20	0	-20	-100.0
Reimbursements	37,013	31,105	-5,908	-16.0
Total	\$6,620,233	\$6,353,026	-\$267,207	-4.0

1. Integrated Regional Water Management Grant Program

Background. The Integrated Regional Water Management (IRWM) Grant Program, which is implemented jointly by DWR and the State Water Resources Control Board (SWRCB), represents a departure from the way the state has traditionally funded water-related projects. This

program is designed to award grants to projects that propose integrated regional solutions to water problems. This differs from traditional single purpose projects, such as water use efficiency projects or water recycling projects.

The Proposition 50 bond provides \$500 million for this program, allocated equally between DWR and the State Water Resources Control Board (SWRCB). Of the total allocated to DWR, \$32 million has been set aside to fund recommendations from the Governor's Drought Planning Panel. About \$12.5 million has been set aside for implementation of the program by DWR and \$8.8 million is allocated to fund bond issuance costs. This leaves approximately \$197 million for projects to be awarded under the IRWM program. So far, \$49.8 million has been allocated to DWR for grants.

Draft guidelines for the program are currently being circulated for public review. The department plans to accept applications for planning grants by May 12, 2005 and construction grants by July 14, 2005.

Governor's Budget. The budget includes \$47.9 million in Proposition 50 bond funds for the second round of IRWM grants for projects.

Staff Recommendation. Staff recommends that the Subcommittee hold this item open and direct staff to evaluate the role of this program in funding the CALFED program under the California Bay-Delta Authority's current two-year financing plan.

2. Desalination Grant Program

Background. Water desalination is the removal of salts and dissolved solids from saline water (brackish or seawater). The Proposition 50 bond provides \$50 million for a desalination grant program that would provide grant funds for feasibility studies and to assist in the construction of projects for desalination of ocean and brackish waters.

Of the \$50 million allocated in the bond, approximately \$46 million is available for grants. The remainder is provided for implementation of the program by DWR (\$2 million) and bond issuance costs (\$1.8 million). So far, \$25 million has been allocated to DWR for desalination grants.

On March 30, 2005, the department released draft funding recommendations for the first round of grants funded by the \$25 million appropriated in 2003-04. Grants were awarded to three construction projects, six pilot and demonstration projects, seven research and development projects, and nine feasibility studies. The department plans to make its final decision on the funding awards by May 11.

Governor's Budget. The budget includes \$21.3 million for grants that will fund feasibility studies and assist in the construction of projects for desalination of ocean or brackish waters.

Staff Recommendation. Staff recommends that the Subcommittee hold this item open and direct staff to evaluate the role of this program in funding the CALFED program under the California Bay-Delta Authority's current two-year financing plan.

3. Drinking Water Quality—Pilot Projects

Background. The Proposition 50 bond provides \$50 million for pilot and demonstration projects that remove contaminants from drinking water. Half of the funds will fund projects for treatment or removal of certain contaminants. The other half of the funds will be for projects that use ultra violet or ozone disinfection treatment of drinking water. The DWR is responsible for managing these grants once they are awarded, but the Department of Health Services (DHS) is charged with developing criteria for awarding the grants and selecting projects to be funded. This is similar to the administrative arrangement with DHS for the expenditure of federal and state funding from the Safe Drinking Water State Revolving Fund to rehabilitate drinking water systems.

Of the \$50 million allocated in the bond, approximately \$46 million is available for grants. The remainder of the funds is directed for implementation of the program by DWR (\$600,000), DHS (\$1 million), support for DWR's division of water quality (\$1 million) and bond issuance costs (\$1.8 million). So far, \$11.3 million has been allocated to DWR for grants.

The first cycle of funding for this program is scheduled to start rolling out late in 2005. The DHS requested pre-applications that were due December 1, 2004. Since then, DHS has been reviewing the pre-applications and is scheduled to develop project priority lists for public review this spring. The fundable portion of the priority list will be determined this summer and DHS will invite submittal of full applications at that time.

Governor's Budget. The budget proposes \$11.5 million in Proposition 50 bond funds for this grant program.

Staff Recommendation. Staff recommends that the Subcommittee approve this request as budgeted.

4. Yuba Feather Flood Protection Program

Background. The Yuba Feather Flood Protection Program was created in the Proposition 13 bond fund to address the serious threat to life and property along the Yuba/Feather River system. The bond allocated \$90 million for this program (\$20 million is being implemented by the Department of Fish and Game for environment and wildlife mitigation projects). Approximately \$2.6 million of the \$70 million being implemented by DWR was set aside to reimburse local entities in Sutter County for their local share of cost-shared projects.

The DWR has allocated approximately \$18 million of the funds to flood control projects as part of the Yuba Feather Flood Protection Program.

Governor's Budget. The budget includes the following budget change proposal to fund the Yuba Feather Flood Protection Program:

- \$20.9 million is proposed from Proposition 13 bond funds to implement the Yuba Feather Flood Protection program. Approximately \$700,000 is to fund administration of the program at DWR. State operations to fund this program have been reduced by \$282,000 and 4 positions due to a reduction in workload and staffing needs expected in the budget year. This is the fifth year of funding for this program. The remaining funds are available for local assistance to fund Yuba County Water Agency's first-year construction funds for the lower Feather River and lower Bear River setback levees and levee improvement along the Yuba River, upper Bear River and the Western Pacific Interceptor Canal.

The Governor has submitted an April Finance letter requesting the following amendments to the budget for the Yuba Feather Flood Protection Program:

- The budget proposes \$14 million from Proposition 13 bond funds to fund the acceleration of proposed levee improvements for the Three Rivers Levee Improvement Authority.

Plumas Lakes Development. The April Finance letter will fund the acceleration of levee improvements that will facilitate the construction of a controversial housing development referred to as the Plumas Lakes development. In a decision made earlier this year, the State Reclamation Board agreed to \$60 million in levee improvements along the Feather and Yuba rivers to allow Yuba County to build 1,500 new homes on land that has been flooded twice in the last 20 years.

Staff Recommendation. Staff recommends that the Subcommittee approve the budget proposal.

5. *Paterno* Lawsuit Settlement

Background. The *Paterno v. State of California* lawsuit stems from a flood on the Yuba River in 1986. In February of that year, a 150 foot gap opened in the levee, allowing approximately 20,000 acre feet of water to flood 7,000 acres of land in the communities of Linda and Olivehurst, in Yuba County. As a result, hundreds of homes and a shopping center in the area were flooded. Subsequently, approximately 2,600 affected parties filed suit against the local reclamation district and the state. In 2001, a trial court ruled in favor of the state. However, in 2003 the California Court of Appeal ruled that the state was liable (and that the local reclamation district was not) and sent the case back to the trial court to award damages. The state appealed to the California Supreme Court which refused to hear the case.

The California Court of Appeal found the state liable for inverse condemnation arising from the failure to properly maintain the levee that failed. This decision has opened up the state to enormous financial liability for flood damages elsewhere in the system.

The state is currently in settlement negotiations related to the *Paterno* lawsuit and has tentatively agreed with the plaintiffs on a \$464 million settlement. Specifically, the administration has identified the following settlements:

- First Union Real Estate Equity (\$11 million) for damage to the Peach Tree Mall facility.

- Arkwright-Boston Manufacturers Mutual Insurance Co. (\$25 million) for damage to tenants of the Peach Tree Mall.
- Livaich et al (\$428 million) for damage to all other residents and businesses.

Governor's Budget. The Governor's proposed budget includes a proposal to finance the pending settlement of the *Paterno* lawsuit by issuing a judgment bond in the budget year.

The April Finance letter includes a proposal to provide \$11 million in General Fund monies to pay the settlement related to damage to the Peach Tree Mall facility. The department has indicated that it is currently evaluating payment options for the other settlements that are still pending, including financing the largest settlement. New proposals will be included in the May Revision.

LAO Issues. The LAO has raised several issues related to financing the settlement of this lawsuit. The Analyst finds that there are increased costs associated with deferring payment of the settlement over a period of time. They estimate that if this settlement was financed over a 30-year term it would cost around \$600 million after adjusting for inflation. This is approximately \$140 million more than if the settlement were paid in full.

However, the Analyst also finds that, because the *Paterno* obligation is an unanticipated cost, as opposed to an anticipated, ongoing expenditure by the state, it may be a good candidate for financing. The Analyst notes that financing the settlement as opposed to paying the settlement in a lump sum in the budget year would avoid the need to divert General Fund from other legislative priorities.

Staff Recommendation. Staff recommends that the Subcommittee hold this issue open, pending receipt of the Governor's May Revision proposal.

6. Flood Management in Crisis

Background

Description of the Problem. Flood management encompasses both structural flood control projects (levees, weirs, etc.) and floodplain management (land use decisions in floodplains). As the state has become increasingly urbanized, flood management has emerged as a critical and integral part of our infrastructure across the state from the Santa Clara Valley to the Los Angeles River. This continues today as areas of the state that were formerly agricultural, mainly in the Central Valley, develop sizeable suburban communities.

Many of these new communities are being built behind levees and flood control structures that are old and badly in need of repair, and which were never designed to protect homes. Upgrading these structures is costly and the state bears a large share of the costs (as much as 70 percent of the non-federal share). This has been further exacerbated by the *Paterno* decision that found the state solely liable for damages caused by a failed levee in the Central Valley. Despite these mounting state costs, the state has generally reduced its expenditures on floodplain management

activities and routine maintenance of the state's aging flood infrastructure over the last several years. This has resulted in the current flood management crisis in California.

Who is Responsible for Flood Management? The state is responsible for funding structural flood control projects statewide. The state typically provides about 70 percent of the non-federal share to construct federally authorized flood control projects throughout the state. In most parts of the state, local agencies take the lead in constructing these projects, including ongoing operations and maintenance.

However, the state is the lead agency for constructing structural flood control projects that are part of the Central Valley flood control system. The majority of the Central Valley flood control system is operated and maintained by local agencies under the state's oversight, but the state directly operates and maintains a portion of the system. The cost of operations and maintenance of the state-run part of the system is shared equally between the state and local agencies.

The state's role in floodplain management is relatively small in most parts of the state, consisting largely of providing technical assistance to local communities on complying with federal insurance requirements and mapping areas that are prone to flooding. However, the State Reclamation Board, under DWR, is responsible for issuing permits for development within designated floodways in the Central Valley.

Governor's White (Teal) Paper. In response to a request from the Legislature in 2004 the department completed a white paper to address many of the issues raised by the *Paterno* decision. The contents of this paper were the subject of the February 22 hearing of this Subcommittee. The administration's paper identified the following problems with the system:

- Aging infrastructure and deferred maintenance.
- Escalating development in floodplains.
- Declining fiscal resources to support maintenance and upgrades.
- State's potential liability.

The paper recommends several solution strategies to address the many flood management challenges identified in the report. These strategies include the following:

- Evaluate flood control system integrity, rehabilitate as needed, and improve maintenance.
- Create reliable funding sources for funding flood management activities.
- Improve floodplain mapping and outreach on flood risks.
- Reduce or shift the state's liability exposure.

Governor's Proposal

Governor's Proposal Summary. The Governor proposes to increase funding for flood management activities by \$31.5 million in the budget year. This includes \$10.5 million (\$9.7 million General Fund) to increase DWR's flood management activities and \$21 million for capital outlay flood control projects in the Central Valley. With these increases, DWR's total flood management budget for 2005-06 will be about \$73 million, which is a 72 percent increase above current-year appropriations.

State Support. The budget includes funding for the first year of a three-year plan to make “strategic improvements” to flood control. The proposal requests a \$9.7 million General Fund allocation for a variety of activities. The proposal will support 27 new positions and approximately \$5.9 million is proposed to augment the department’s base budget. The remaining \$3.8 million is proposed as a one-time expenditure. Activities to be funded include the following:

- **Central Valley Flood Project Maintenance.** The budget includes \$5.1 million (\$2 million one-time) to support 19 new positions to augment maintenance of the Central Valley flood control projects. This includes improving maintenance of levees and flood control channels, improving the levee inspection program, preparing plans to remove sediment, and making improvements to the state’s maintenance yards.
- **System Reevaluation and Rehabilitation.** The budget includes \$835,000 (\$495,000 one-time) to support two new positions to conduct system-wide geotechnical and hydraulic evaluations of the Central Valley levee system and to begin to rehabilitate some levees. These resources will be used to begin the analyses needed to assess the structural integrity and capacity of the flood control system and to prepare contracts to rehabilitate three Sutter Pumping Plants that are in need of rehabilitation.
- **Emergency Response.** The budget includes \$1.7 million (\$550,000 one-time) for emergency response to support five new positions to augment resources for the state’s emergency preparedness and to replace key information technology that provides data to prevent loss of life and property during emergencies. This data includes river forecasts and information to coordinate reservoir flood control releases.
- **Floodplain Management.** The budget includes \$2 million (\$800,000 one-time) to support one new position and to support contracts to update existing Federal Emergency Management Agency (FEMA) flood insurance rate maps as well as to develop new maps for unmapped stream reaches where urban development is anticipated. The effort will focus on the Central Valley.

Capital Outlay. The budget includes \$21 million (\$16.7 million General Fund and \$4.4 million in Reimbursements) to fund the following capital outlay flood control projects in the Central Valley:

- **South Sacramento County Streams.** The budget includes \$4.3 million in General Fund monies and \$1.8 million in reimbursements to continue funding for projects that will improve South Sacramento's level of flood protection from a 50-year level to a 500-year level.
- **Sacramento River Bank Protection Project.** The budget includes \$5.6 million in General Fund monies to fund bank protection work to prevent Sacramento River Flood Control Project levee failures by providing effective protection of stream banks from erosion.
- **American River Common Features Project.** The budget includes \$3.6 million in General Fund monies and \$1.5 million in reimbursements to fund the Common Features project, which is the first increment of a comprehensive flood control plan for Sacramento.
- **Terminus Dam, Lake Kaweah Project.** The budget includes \$2.8 million in General Fund monies and \$1.2 million in reimbursements to complete a project to reduce flood risk to the City of Visalia and 300,000 acres of agriculture/crop land by raising the spillway at Terminus Dam.

- **1997 Flood Damage Repair.** The budget proposes \$346,000 in General Fund monies to complete real estate easement acquisitions associated with flood damage repairs completed after the 1997 flood event.
- **Eastside Bypass Levee Raising Project.** The budget includes \$55,000 in General Fund monies to complete real estate easement acquisitions associated with raising 7.3 miles of levees along the Eastside Bypass.

April Finance Letter. The April Finance letter submitted by the Governor requests an additional \$800,000 in federal funds to support floodplain management efforts. This means that floodplain management activities will be augmented by a total of \$2.8 million in the budget year. Specifically, the additional funds will support FEMA's map modernization effort (\$600,000) and will increase the level of training and technical assistance regarding flood insurance for local governments (\$200,000).

Capital Outlay April Finance Letter. The April Finance letter requests the following amendments to the budget to reappropriate or extend liquidation periods for capital outlay funds that were allocated in prior budget years and not expended for specific flood control projects. The projects include the following:

- **Sacramento River Bank Protection Project.** The budget proposes to extend the liquidation period by \$1.7 million General Fund for two more years. Complex issues have caused delays of scheduled project actions. These funds were originally appropriated in 2000.
- **Merced County Streams.** The budget proposes to extend the liquidation period by \$323,130 General Fund for two more years. This funding is needed to pay the state's cost share of the final aspect of the replacement of the Oakdale Bridge. These funds were originally appropriated in 2000.
- **Cache Creek Settling Basin.** The budget proposes to reappropriate \$447,476 General Fund. This project is currently on hold because the U.S. Army Corps of Engineers has run out of funding to complete the remaining elements of this project. It is not clear that these funds will be needed in the budget year and may be re-directed to other priority flood control projects. These funds were originally appropriated in 1997 and have been reappropriated several times.
- **1997 Flood Damage Repair.** The budget proposes to reappropriate \$956,650 General Fund and \$383,750 in reimbursement funds. These repairs have been delayed due to several factors including the unwillingness of landowners to accept state compensation offers for property taken to construct flood control projects. These funds were originally appropriated in 1998 and have been reappropriated several times.
- **Mid-Valley Area Levee Reconstruction.** The budget proposes to reappropriate \$746,076 General Fund and \$832,800 in reimbursement funds. This levee reconstruction has been delayed due to additional studies required by the U.S. Army Corps of Engineers and design changes. These funds were originally appropriated in 1999.
- **Sutter County Bridge Replacement.** The budget proposes to extend the liquidation period by \$100,000 General Fund for two more years to complete the O'Banion Road Bridge. This project has been delayed because of the department's decision to participate in the Federal Highway Administration's Highway Bridge Replacement program. The

federal government is now providing for 80 percent of the costs of the project. These funds were originally appropriated in 1999.

- **Upper Sacramento Area Levee Reconstruction.** The budget proposes to reappropriate \$210,624 General Fund and \$398,880 in reimbursement funds. This project is in the final phase of construction and has been delayed because of design changes. These funds were originally appropriated in 1997.
- **Tule River, Success Reservoir Enlargement.** The budget proposes to reappropriate \$1.2 million General Fund and \$650,693 in reimbursement funds. This project is currently on hold because the U.S. Army Corps of Engineers found a seismic deficiency at Success Dam. The Corps have proposed the construction of a new dam to replace the existing dam. However, this dam will not be completed until 2009 so funds for the reservoir enlargement project will not be needed in the near future and may be re-directed to other priority flood control projects. These funds were originally appropriated in 2002.

Legislation. The Governor has also put forward three pieces of legislation to implement some of the recommendations in the white paper, including:

- **Central Valley Flood Control Assessment District.** This legislation would create a Central Valley Flood Control Assessment District that would take over the state's lead role in constructing federally authorized projects. This district will have authority to collect assessments for funding flood control projects, thereby reducing reliance on the General Fund for this activity. The district would also facilitate a mitigation banking program to provide more flexibility in carrying out maintenance activities that comply with environmental regulations, facilitate increased notification of landowners regarding flood risks and facilitate a mandatory flood insurance offer. This proposal is contained in AB 1665 (Laird).
- **Amend Proposition 218.** Currently, Proposition 218 exempts water, sewer, and garbage fees from requiring a two-thirds voter approval to increase fees. The administration proposes to amend the constitution to exempt flood control and storm water from the two-thirds voter requirement. This proposal is contained in ACA 13 (Harman).
- **Limiting Inverse Condemnation.** The administration has also proposed a constitutional amendment and tort reform that would limit inverse condemnation for harm or damage caused by floods. The *Paterno* decision found the state liable for inverse condemnation from the failure to properly maintain a levee that failed. This proposal has not been introduced.

Concerns with Governor's Proposal

Governor's Plan Falls Short of Limiting State's Liability Exposure. The Governor's plan does include important steps in addressing the deficit of funding needed to improve the state's flood management system in the Central Valley. However, the plan still falls short of limiting the state's liability exposure created under the *Paterno* decision. Specifically, it does not directly address the continuing development in and around the state's deep floodplains that are at a significant risk of flooding. This problem is highlighted by the recent decision by the State Reclamation Board to allow nearly 1,500 new homes to be built in Yuba County on land that has flooded twice in the last twenty years.

The LAO recommends improving the connection between land use decisions and resulting flood-related consequences and believes the Governor should have gone farther in this area. The LAO suggests that the Legislature consider the following strategies:

- **State Cost Share of Flood Projects.** The Analyst suggests that the Legislature could render local agencies ineligible for the state's funding share in cases where local land use decisions result in substantial flood risks. The LAO finds that such eligibility criteria could be used to encourage those making land use decisions to give greater consideration to the potential costs and benefits of their decisions.
- **Floodplain Development Fee.** The Analyst also suggests that the Legislature might consider enacting a floodplain development fee that would fund the state's additional flood-related costs resulting from new development in floodplains. The LAO finds that such a fee would be justified based on the beneficiary pays principle and that the fee would pay for the additional costs that are imposed on the flood control system because of the new development.

Value of a Central Valley Flood Control Assessment District. The Governor has proposed a Central Valley Flood Control Assessment District that would take over the state's responsibilities related to the Central Valley's flood management system, including liability for the system. Staff finds that the creation of this district could have no more than a marginal impact on improving the connection between land use decision making and the resulting flood-related fiscal consequences.

Such a connection might be better motivated by the establishment of a system-wide fee that would cover the costs of maintaining the Central Valley flood control project. Presently, the state covers 50 percent of the maintenance costs associated with portions of the Central Valley flood management system. The Governor's proposal would shift these maintenance costs (approximately \$36 million annually) to the new assessment district by 2009-10. The LAO also supports this shift, finding that it is more appropriate for those persons living and benefiting from the flood control system to pay for costs associated with its maintenance as opposed to general state tax payers.

Nevertheless, the creation of a new district and a system-wide fee to cover maintenance costs will not have a real impact on land use decision making and the resulting flood-related fiscal consequences unless they are required to pay for the fiscal consequences. Presently, the state and federal governments pay for a large portion of flood control projects and cover nearly all the costs associated with flood emergencies.

Assessment of System's Structural Integrity Needed. The LAO finds that a comprehensive system-wide evaluation of the Central Valley flood control system is needed. The Governor proposes a modest effort to begin evaluating the structural integrity of the system (\$835,000). However, this will be a multi-year effort and will require a substantial funding commitment. Ultimately, the evaluation could cost hundreds of millions of dollars. Furthermore, the department has indicated that there are over 200 erosion sites in the Central Valley system, managed by the state, that would need to be evaluated and addressed prior to transferring management responsibilities from the state to a new regional entity.

The LAO recommends that the department develop and submit to the Legislature for its review a plan that: (1) schedules over time an evaluation of the complete system, based on a clear set of priorities to guide the timing of the work; (2) estimates the costs of such an evaluation; and (3) identifies funding sources to support the effort, including federal funds and flood control benefit assessments. This plan is important since the judge in the *Paterno* decision cited the state's lack of a plan for dealing with the system's deficiencies was key in the finding by the court that the state was liable for inverse condemnation.

Other Concerns

Local Flood Control Subventions. As mentioned previously, the state pays upwards of 70 percent of the non-federal share of federally authorized flood control projects. The state pays its share to local governments outside the Central Valley through local flood control subventions. The state currently owes \$188 million and will owe a total of \$330 million over the next ten years. These arrearages continue to increase when the state and federal governments authorize additional projects. The Governor's budget does not present a plan for addressing the arrearages that are owed to local governments.

Re-Evaluate State's Role with Respect to Delta Levees. The LAO finds that there is a statewide interest in ensuring the performance of the levees in the Delta, particularly given much of the state's dependence on the Delta for water supplies. The LAO also finds that failure of these levees can have substantial public costs (such as the recent failure at Jones Tract that cost \$95 million) and that it may be more cost-effective for the state to expand its oversight over levees in the Delta that may have a direct impact on the state's water supply systems.

Staff Recommendation. Staff recommends that the Subcommittee do the following:

- Approve the Governor's budget change proposals and April Finance letter proposal.
- Direct Staff, LAO, DOF, and the department to work on trailer bill language that would prohibit planning agencies from approving a development unless the local agency can identify sufficient flood protection to protect new residential developments.

7. Sacramento Valley Water Management Program

Background. The Sacramento Valley Water Management program is funded by bond monies that were set aside in the Proposition 204 bond to fund water management projects in the Sacramento Valley. These funds are currently being used to implement the Bay-Delta Agreement, which called for short- and long-term work plans for projects that would make additional water available to meet Delta flow requirements.

To date, the DWR has allocated \$8 million which has gone towards the development of the agreement and a short-term work plan.

Governor's Budget. The budget includes \$8.5 million in Proposition 204 bond funds for this program to fund environmental work and planning and project design to start implementing components of the Bay-Delta Agreement. The majority of the funds are expended through a

contract with the Northern California Water Authority and approximately \$60,000 is allocated to support administration by DWR.

Staff Recommendation. Staff recommends that the Subcommittee approve the budget proposal.

8. San Joaquin River Restoration Project

Background. The San Joaquin River historically supported a large salmon population. Its flows have been extremely important to the agricultural development of the San Joaquin valley. However, at present, 100 percent of the river's flows are being diverted at or immediately below Friant Dam, causing sixty miles of the river to dry up and destroy any fisheries that may have existed. Furthermore, the water that flows in the lower river that enters the Delta is stagnant and polluted and impairs water quality in the Delta. This impacts all parties exporting water from the Delta and also negatively impacts the environment.

In 1998, the Natural Resources Defense Council (NRDC) sued the U.S. Bureau of Reclamation (USBR) and the Friant Water Users Authority (FWUA) claiming that current water management practices destroyed native fisheries in the river. In response, DWR entered into a contract with the FWUA in cooperation with the NRDC in the amount of \$15.7 million from Proposition 13 bond funds for feasibility studies and pilot projects to start a restoration effort for the San Joaquin River. However, in April of 2003, settlement discussions between NRDC and FWUA broke down and the parties returned to court. In August 2004, a federal judge granted NRDC's motion for a court-ordered plan to restore the San Joaquin River. The parties are in the early stages of the remedy phase.

The FWUA has expended \$6.5 million on a study that is still incomplete. The remaining funds are not being expended, as litigation regarding the river continues.

Governor's April Finance Letter. The April Finance letter proposes to revert the remaining \$9.2 million in Proposition 13 bond funds that were appropriated in 2000 and awarded to FWUA to develop a restoration plan for the river. The DWR also proposes to expend \$1.8 million of the Proposition 13 bond funds being reverted to support two positions and manage contracts to complete the studies started in 2000.

Timing of Expenditures Problematic. The department has indicated that it will work with the USBR, the Department of Fish and Game, the U.S. Fish and Wildlife Service, and the National Oceanic and Atmospheric Administration to develop a range of restoration strategies for the San Joaquin River. The state's involvement in this working group is problematic given the ongoing litigation regarding the restoration of the river. The USBR is the main defendant in litigation where it is fighting to keep the river dry in perpetuity. This position is likely to inherently bias any work that continues while the Bureau is still involved in this litigation.

Furthermore, a federal judge has already directed the development of a court-ordered plan. Therefore, expenditure of state funds to develop a restoration plan may be premature given that a court-ordered plan will be forthcoming.

Violation of Bond Rules. Staff has been informed that the FWUA continues to hold approximately \$1 million in bond monies that have not been expended. The FWUA has held this money for a period of time without expenditure and has been able to earn interest on these funds. This is a violation of the law governing the tax exempt status of the bond monies. The department has not been able to provide an explanation of how this was allowed to happen.

Staff Recommendation. Staff recommends that the Subcommittee take the following actions:

- Revert the \$9.2 million in Proposition 13 bond funds.
- Reject the proposal to expend \$1.8 million to continue to fund the restoration study since the court-ordered plan for restoration is still being developed.
- Direct DWR to report on what other funds need to be reverted from the Friant Water Users Authority and what steps DWR has put in place to avoid this behavior in the future.

9. Bond Funds: Extension of Liquidation Period

Governor's April Finance Letter. The April Finance letter requests an extension of the liquidation period for the following programs:

- **Local Projects.** Approximately \$129,263 is needed to complete the water supply feasibility studies funded by Proposition 204 bond funds in 2000-01. Approximately \$25 million was approved in 1996 for feasibility studies and local projects in Proposition 204.
- **Groundwater Recharge Loan Program.** Approximately \$176,505 is needed for feasibility study grants and construction loans for water conservation and groundwater recharge projects funded by Proposition 82 bond funds in 2002. Proposition 82 was passed by the voters in 1988 and provided \$60 million for various water projects.
- **Watershed Program.** Approximately \$241,701 is needed to cover existing contract commitments for work associated with preserving the upper Feather River watersheds from Proposition 50 bond funds. In addition, the administration also requests extending the liquidation on the balance of Proposition 50 bond funds needed to support watershed grant contracts awarded under the SB 23 (Costa) program. It is anticipated that invoicing and payment activities related to these grant contracts will extend into the budget year.
- **Drought Panel Program.** Approximately \$4.2 million in Proposition 50 bond funds are remaining on 26 contracts awarded for projects that reduce the impacts of drought. The department anticipates that a majority of these funds will be encumbered in the current year, but is anticipating that approximately \$1 million will require extension of the liquidation period since invoicing and payment activities will likely extend into the budget year.

Staff Recommendation. Staff recommends that the Subcommittee approve the budget proposal.

10. All-American Canal Lining

Background. Legislation (Chapter 813, Statutes of 1998 [SB 1765, Peace]) provides \$235 million in General Fund monies as a continuous appropriation to the Colorado River Management Account. These funds are to reimburse local agencies for the lining of the All-American Canal and other projects that help the state live within its Colorado River water

allocation. While not explicitly part of the 2003 Quantification Settlement Agreement, the allocation of these funds was part of the general agreement made between several Southern California water agencies and the state.

Approximately \$60 million in General Fund monies and \$19.3 million in Proposition 50 bond funds have been provided to the Colorado River Management Account. The majority of these funds have been allocated to reimburse locals for the lining of the Coachella Canal. However, some funds have been allocated for the All-American canal project, as well. There were no General Fund monies provided for this program in the current year.

Governor's Budget. The budget includes \$59 million in General Fund monies to reimburse local water districts for costs associated with lining the All-American Canal.

Funds May Not Be Needed in 2005-06. The department has indicated that all of these funds may not be needed in the budget year. The department has indicated that progress has been slow on plans to line the All-American Canal, which will likely delay construction and the need to allocate these funds in the budget year.

Staff Recommendation. Staff recommends that the Subcommittee direct DWR to provide a more refined estimate of those funds actually needed in the budget year to reimburse local agencies for the activities to be funded by the Colorado River Management Account.

3940 **State Water Resources Control Board**

Background. The State Water Resources Control Board (SWRCB), in conjunction with nine semi-autonomous regional boards, regulates water quality in the state. The regional boards—which are funded by the state board and are under the state board's oversight—implement water quality programs in accordance with policies, plans, and standards developed by the state board.

The board carries out its water quality responsibilities by: (1) establishing wastewater discharge policies and standards; (2) implementing programs to ensure that the waters of the state are not contaminated by underground or aboveground tanks; and (3) administering state and federal loans and grants to local governments for the construction of wastewater treatment, water reclamation, and storm drainage facilities. Waste discharge permits are issued and enforced mainly by the regional boards, although the state board issues some permits and initiates enforcement actions when deemed necessary.

The state board also administers water rights in the state. It does this by issuing and reviewing permits and licenses to applicants who wish to take water from the state's streams, rivers, and lakes.

Governor's Budget. The Governor's budget proposes \$729 million to support SWRCB in the budget year. This proposal is approximately \$300 million less than current-year expenditure levels, mainly due to a reduction in the bond funding available for appropriation. General Fund support for the board is proposed to increase by \$1.4 million in the budget year due to increases related to employee compensation and federally mandated activities related to the cleanup of the Leviathan Mine.

Summary of Expenditures				
(dollars in thousands)	2004-05	2005-06	\$ Change	% Change
Type of Expenditure				
Water Quality	\$1,023,012	\$719,206	-\$303,806	-29.7
Water Rights	10,937	9,808	-1,129	-10.3
Administration	17,289	17,805	516	3.0
<i>Less distributed administration</i>	<i>-17,289</i>	<i>-17,805</i>	<i>-516</i>	<i>0.0</i>
Unallocated Reduction	-368	-454	-86	0.0
Total	\$1,033,581	\$728,560	-\$305,021	-29.5
Funding Source				
General Fund	\$27,883	\$29,236	\$1,353	4.9
Special Funds	320,470	351,177	30,707	9.6
Bond Funds	517,723	178,292	-339,431	-65.6
<i>Budget Act Total</i>	<i>866,076</i>	<i>558,705</i>	<i>-307,371</i>	<i>-35.5</i>
Federal Trust Fund	127,163	128,532	1,369	1.1
Reimbursements	10,014	9,815	-199	-2.0
State Water Quality Control Fund	21,130	22,130	1,000	4.7
State Water Pollution Control Revolving Fund	-2,682	-2,682	0	0.0
Petroleum Underground Storage Tank Financing Account	11,880	12,060	180	1.5
Total	\$1,033,581	\$728,560	-\$305,021	-29.5

1. Wetlands Protection

Background. The board currently issues water quality certifications (commonly referred to as Section 401 certifications) for projects that require a federal permit or license certifying that discharges will not violate state water quality standards. This program seeks to protect existing wetland areas by addressing discharges related to dredge and fill materials associated with land and port development. Presently, the board has nine staff statewide that review these applications and issue certifications. This is significantly less than is needed to address the ongoing workload associated with this program.

Workload for this program was currently increased due to a U.S. Supreme Court decision commonly referred to as the *SWANCC* decision (*Solid Waste Agency of Northern Cook County v.*

U.S. Army Corps of Engineers). Under this decision, the court found that discharges into certain wetlands no longer needed permits from the federal government under the Clean Water Act. Consequently, the state is now charged with protecting these wetlands. This significantly increased the workload associated with protecting the state's wetland areas and exacerbated the existing funding deficiencies.

Governor's Budget. The budget proposes to redirect \$600,000 in contract funds to establish 7.4 positions to operate a regulatory program that protects wetlands no longer under the jurisdiction of the federal government due to the recent U.S. Supreme Court decision.

Program Badly Under-Funded. The board found that it would need over 130 positions to fully staff the certification program and protect the state's remaining wetlands areas. More recently, the board has estimated that approximately 41 positions would be needed just to ensure that the 401 certification program is at the same level of effectiveness as the other water quality programs within the board's core water quality regulatory programs. This proposal gives the board only 16 positions, which is far below those needed to truly protect our wetland areas. The under-funding requires the board to allocate its resources to only the most destructive discharges to wetland areas.

The board has indicated that 2.6 positions will be allocated to the state board to do statewide coordination related to this program and to work on various policy definitions, including defining wetlands, establishing consistent definitions of beneficial use, as well as other activities, in order to help the regional boards prioritize their workload. Staff finds this sort of coordination effort important, but remains concerned that there are not enough staff and resources dedicated to this program to truly protect the small number of wetlands that still exist.

Staff Recommendation. Staff recommends that the Subcommittee adopt the budget proposal.

2. Enforcement Activities

Background. On April 4, the Subcommittee asked the Secretary of Cal-EPA to report on its agency-wide enforcement initiative. The Secretary has reported that they are working to improve their management of information in order to better prioritize enforcement activities based on the greatest risk to the environment and to initiate an agency-wide complaint tracking system.

The Secretary has asked that the board implement the following improvements to its current enforcement program in a memorandum dated March 23, 2005:

- Develop a statewide approach for prioritization of enforcement actions which requires the State Water Board to review regional board enforcement activities on an annual basis.
- Transition to an electronic data filing system that will enable automated compliance checking and the development of a "compliance report card" for dischargers.
- Create a clear division of duties between permitting and enforcement staff.
- Coordinate enforcement strategies regionally in conjunction with other enforcement agencies to ensure that violations are promptly and consistently addressed.
- Standardize permitting requirements and permit monitoring in order to improve enforceability.

- Standardize the imposition and collection of mandatory minimum penalties.
- Develop a uniform program for addressing chronic violators.

How Will the Suggested Enforcement Improvements be Implemented? The board is currently developing multiple strategies for implementing the recommendations made by the Secretary for Cal-EPA in his March 23, 2005 memorandum. The board has indicated that the initiative will be implemented by redirecting staff internally and is not requesting additional budget resources at this time. Staff recognizes that some of these improvements can be done administratively and without new resources. However, it is unclear whether the board can make real improvements in its enforcement program without some augmentation of resources and positions.

Other Improvements Could Be Made. One criticism raised regarding the board's current enforcement activities is its lack of enforcement presence in the field. Typically, SWRCB staff has been much more involved in upfront activities related to permitting and have dedicated fewer resources to inspection and enforcement activities in the field. One suggestion for improving enforcement of state water quality laws has been to contract with the Department of Fish and Game to have wardens enforce state water quality laws and permits. The board has indicated that it is considering this option.

Staff Recommendation. Staff recommends that the Subcommittee direct the board to provide information on the funding needed to implement the improvements to the enforcement program outlined in the March 23, 2005 memorandum from the Secretary for Cal-EPA.

3. Bond-Funded Grant Programs

Background. The board implements several bond programs. Concerns have been raised over the last two years regarding the length of time it takes the board to award grants and contracts. These problems were, in part, a result of administrative actions such as the hiring freeze and Control Section 4.10 reductions that eliminated many newly created bond-funded positions that had not been filled. However, delays also resulted from various administrative practices by the board that slowed the time it took to review, award, and issue grants.

Governor's Budget. The Governor proposes allocation of \$165.4 million in bond funds from Propositions 13 and 50 resources bonds. The bond funds are allocated to the following programs consistent with allocations specified in the bond acts:

- **Coastal Water Quality.** The budget includes \$66.5 million in Proposition 50 bond funds for grants to finance projects that restore and protect water quality and the environment in coastal waters, estuaries, bays and near-shore water and groundwater. Approximately one-half of these funds are for the Clean Beaches program.
- **Integrated Regional Water Management.** The budget includes \$55 million Proposition 50 bond funds for grants to finance integrated water management projects and feasibility studies in conjunction with the Department of Water Resources. Approximately \$26 million was allocated for the first round of grants in 2003-04.
- **Small Community Wastewater Grants.** The budget includes \$20.7 million Proposition 50 bond funds for grants to assist in the construction of publicly owned wastewater

treatment and collection facilities. Approximately \$16 million from Proposition 50 was allocated to this program in 2003-04.

- **Water Recycling.** The budget includes \$6.4 million in Proposition 13 bond funds to cover anticipated commitments for construction grant projects ready to proceed to construction.
- **Non-Point Source Pollution Control Program.** The budget includes \$3.9 million in Proposition 13 bond funds for grants to local agencies and nonprofit organizations for projects that reduce non-point source pollution.
- **Watershed Protection.** The budget includes \$1.9 million in Proposition 13 bond funds for grants to fund projects that assist in implementing watershed plans to reduce flooding, control erosion, improve water quality, and improve habitats.
- **Agriculture Water Quality and Dairy Water Quality Programs.** The budget includes \$615,000 to support 6.5 new positions to implement the Agriculture Water Quality and Dairy Water Quality programs created in the 2004 budget.
- **Coastal Non-Point Source Pollution Control Program.** The budget includes \$385,000 in Proposition 13 bond funds for grants to fund coastal non-point source pollution control projects.

Governor's April Finance Letter. The Governor has submitted an April Finance letter requesting the following amendments to the budget to reappropriate and extend the liquidation period for bond funds allocated in prior budget years:

- **Extend Liquidation Period for Various Proposition 13 Programs.** The letter proposes to extend the liquidation period for \$6 million in Proposition 13 bond funds allocated in 2000-01 for Watershed Protection, Non-point Source Pollution Control, and Coastal Non-point Source Pollution Control Programs. The letter also proposes to extend the liquidation period for \$68 million in Proposition 13 bond funds allocated in 2001-02 for the same programs plus Lake Elsinore and San Jacinto Watershed Authority local assistance programs. Approximately \$295 million was allocated to these programs in the Proposition 13 bond. The board cites various unexpected project delays as the reason this extension is needed.
- **Southern California Integrated Watershed Program.** The letter proposes to reappropriate \$150,000 in Proposition 13 bond funds and extend the liquidation period for \$28 million in Proposition 13 bond funds to support the Southern California Integrated Watershed Program. These funds were appropriated in 2000-01 and 2001-02. Approximately \$235 million was allocated to this program in the Proposition 13 bond.
- **Water Recycling Projects.** The letter proposes to extend the liquidation period for approximately \$4 million in Proposition 50 bond funds that were allocated for water recycling projects in 2002-03. Approximately \$10 million in Proposition 50 bond funds was provided for water recycling in 2002-03.
- **Agriculture Water Quality Program.** The letter proposes to extend the liquidation period for \$9.5 million in grant funds provided in the current year. The board was given only one year to encumber these funds, which is not sufficient, given delays in developing guidelines and processing grant applications.

Changes to Board's Grant Process. The board has indicated that it has taken several steps to reduce the time it takes to process grant applications. Changes the board has undertaken include:

- Reorganization of staff to focus efforts on grant programs.
- Switching from awarding contracts to awarding grants, which eliminates the need for approval from the Department of General Services.
- Developing standard grant templates to expedite legal review.
- Requiring that a scope of work be completed at the time of application. (Previously this step was done after initial applications were filed.)
- Developing an on-line application tool.
- Developing guidelines and selection criteria prior to requesting grant applications.
- Eliminating redundant proposal review steps in the grant review process.

The board has taken several steps to improve its granting process, which, the board estimates, will shorten the time it takes to issue grants. However, the results of many of these changes have only recently begun to be realized and some programs continue to be delayed, as illustrated by the number of requests for extensions of liquidation periods requested of the board in the Governor's April Finance letter. It is not clear that board staff has communicated these changes to the participants in the board's various grant programs.

Small Community Groundwater Program. Specific concerns have been raised with the board's Small Community Groundwater Program. This program provides \$9.5 million in Proposition 40 bond funds for grants to small and disadvantaged communities for projects that clean up polluted groundwater for drinking water purposes. The board has had these funds for nearly three years, but has still not released draft guidelines for the program.

The board has indicated that it has met with stakeholders and reports that one of the stakeholders' main recommendations is that the board coordinate with the Department of Health Services' (DHS') priority lists for projects to be funded under its Proposition 50 bond funded programs. This would avoid the need for many of the small and disadvantaged communities to be required to complete a second application, which can be a costly process. The board has indicated that it is awaiting the release of DHS' priority lists before it moves forward on its program. The board also indicates that it will accept additional applications to the extent that some communities did not apply under DHS' programs. The board plans to award grants in the budget year.

Ag Water Quality Grant Programs. In the current year, legislation was enacted to provide bond funding for a new Ag Water Quality Grant Program and Dairy Water Quality Grant Program. These grant programs provide funds to support monitoring, demonstration, research, and construction of projects to reduce pollutants in agricultural drainage water and groundwater contamination. The federal government implements a similar program called the Environmental Quality Incentives Program (EQIP) that provides federal funds and technical assistance to farmers and ranchers implementing conservation plans to improve water quality. In addition, the board is also required to issue and enforce waivers from waste discharge requirements for agricultural dischargers.

During the 2004-05 budget process, the legislature requested a supplemental report from the board on the coordination of these programs, including suggested legislative changes to improve coordination. The board's report provided only very broad suggestions on how the board could

better coordinate these programs. The board has indicated that confidentiality related to participants in the federal EQIP program has hindered coordination with the federal program.

Staff has been informed that the board's process for reviewing grants in this program is flawed. Specifically, there is concern that the process has not been competitive and transparent. Furthermore, there is concern that many of these projects are being approved without the identification of essential monitoring or deliverables. These elements are essential in ensuring that expenditure of monies meets the intended goals, which is to improve water quality.

Areas of Special Biological Significance. California has 35 Areas of Special Biological Significance (ASBS). These areas are marine habitats that were given special protection status decades ago to protect the unique and sensitive biological species and communities found in these areas. The State Water Resources Control Board adopted a pollution discharge prohibition decades ago to protect the resources within these special areas.

The State Water Board recently completed a study of the ASBS and found 1,654 direct discharges into these areas. Virtually all of these discharges are illegal and the board is taking actions to enforce against these dischargers. The board is proposing to allocate \$66 million in Proposition 50 bond funds that would go to projects that improve coastal water quality. Some of these funds could be utilized for projects that help expedite the elimination of illegal discharges into the ASBS.

Staff Recommendation. Staff recommends that the Subcommittee hold this issue open and direct the board to provide additional information on the following:

- The board's efforts to communicate its improved processes to the stakeholders participating in its grant processes.
- The board's review process for the implementation of the Ag Water Quality Grant Program and Dairy Water Quality Grant Program.
- The board's plans for awarding the \$66 million for coastal water quality, including any criteria that may be related to reducing discharges into ASBS.

4. Water Rights Program

Background. The board is responsible for regulating a number of surface water rights, including issuing new water rights, approving changes to existing rights, and enforcing existing rights. In 2003, legislation was enacted to implement water rights fees to shift funding for the board's water rights program from the General Fund to fees. The new fees are assessed annually on parties applying for or holding water rights that are under the jurisdiction of the SWRCB.

The water rights program was reduced by approximately \$3.3 million (about 30 percent) in 2002-03. The reductions to the water rights program have increased an already existing backlog of water rights applications pending at the board. This backlog has been further exacerbated by the new fee program given the extra staff time required to address issues related to fee collection. Furthermore, the board is currently being sued on its collection of the water rights fee. This has also taken staff time away from routine water rights program activities.

Governor's Budget. The budget proposes to provide \$231,000 from the Water Rights Fund to support 2.6 positions that will be filled with student assistants to update and maintain accurate records of ownership for the water rights program. The budget also proposes to redirect \$270,000 of federal funds to the water rights fund in an appropriate charge to the U.S. Bureau of Reclamation for the costs of administering the Bureau's water rights.

In-Stream Flow Requirements on North Coast Streams. Legislation (AB 2121, Committee on Budget) was enacted in 2004 that requires the board to adopt, as state policy, guidelines developed by the State Department of Fish and Game and the National Oceanic and Atmospheric Administration regarding the amount of water needed in certain North Coast rivers for certain fish species. The legislation specifies that the board adopt these guidelines, as state policy, within two years after necessary environmental reviews are completed.

The 2004-05 budget provided \$1.5 million from tidelands oil revenues to fund in-stream flow requirements at the SWRCB. However, the administration's most recent estimates of tidelands oil revenues are significantly lower than previously anticipated due to a lawsuit by the City of Long Beach. Because of this, there may not be sufficient tidelands oil revenues to fund this activity in the current year. The board indicates that it currently has only three positions in its water rights division working on issues related to North Coast streams. Therefore, the board would need additional staffing and funding to work towards implementing the in-stream flow guidelines adopted by the fisheries agencies.

Staff Recommendation. Staff recommends that the Subcommittee direct staff, LAO, DOF, and the board to identify alternative funding sources for augmenting the board's water rights program to continue needed environmental work to implement the in-stream flows adopted by the fisheries agencies.

5. Monitoring Activities

Background. The foundation of much of the board's work involves the monitoring of ambient water quality, including basin planning, setting standards and permitting. According to a recent report by the U.S. EPA, the state is able to report on the health of only 22 percent of its coastal shoreline, 34 percent of its lakes and reservoirs, and 15 percent of its rivers and streams. The state's ambient water monitoring programs include the Surface Water Ambient Monitoring Program (SWAMP) and the Groundwater Ambient Monitoring Assessment (GAMA).

Governor's Budget. The SWAMP program is funded by approximately \$5.5 million in fees assessed on waste dischargers in the budget year. This includes approximately \$2 million to support 17 positions and \$3.5 million for contracts.

Approximately \$10 million is proposed from Proposition 50 bond funds to fund the GAMA program in the budget year. The board has indicated that it is currently working on implementing a groundwater monitoring plan that was established in statute. This plan includes completing a baseline hydro-geologic assessment to determine how groundwater flows. The board proposes that it will spend approximately \$50 million over five years to sample wells around the state and establish a baseline set of data on groundwater quality.

Monitoring Programs Under Funded. Funding for water quality monitoring has been reduced over the past several years as General Fund budget reductions have impacted the board. Currently, the SWAMP program is monitoring at only 50 sites statewide. This level of monitoring leaves significant data gaps, because many of the state's water bodies remain unmonitored. The GAMA effort, currently underway, will create a much needed baseline set of information. However, currently, no ongoing funding sources are available to continue to monitor groundwater quality.

Numerous Monitoring Programs Exist. The state board's ambient water quality monitoring programs are not the only water quality monitoring programs in the state. Currently there are many monitoring efforts underway at the local, state and federal levels. However, these efforts have not been coordinated due to the existence of so many different protocols and agency interests. The lack of coordination among these efforts means that information is not being used as effectively as it could be. In addition, redundant monitoring activities occur because of the lack of basic information on the scope of monitoring activities throughout the state. The state is currently implementing hundreds of million of dollars in water quality improvements that will essentially go unmeasured without a coordinated water quality monitoring program in place.

Federal Funds. The board receives approximately \$10 million annually in Section 106 funds from the Clean Water Act. Staff understands that these funds are supposed to be used to support a robust monitoring program. However, these funds have not been used to support monitoring activities, but, instead, are used to support the board's regulatory programs. The board's water quality regulatory programs are, by statute, funded by fees on entities that pollute state waters. It is, therefore, unclear why the federal funds are funding activities that could be supported by fees.

Staff Recommendation. Staff recommends that the Subcommittee direct the board to provide additional information on its expenditure of Section 106 federal funds and direct staff, LAO, DOF, and the board to work on options for better coordinating the state's monitoring programs so that the state can effectively utilize data currently being collected.

6. Septic Tank Regulations—Informational Issue

Background. Legislation enacted in 2000 (AB 885, Jackson) requires the board to adopt regulations and standards for the permitting and operation of septic tank systems by January 1, 2004. The board still has not adopted these regulations. Leaking or poorly functioning septic tank systems contribute to the bacteriological contamination of groundwater and, in the coastal zone, ocean water and beaches. Many beach closures are related to pollution caused by these systems.

Update on Process. The board has indicated that it has developed draft regulations to implement this statute. These guidelines would require testing of wells near septic systems, as well as certain standards for new septic systems. The board has indicated that these regulations have not been implemented due to ongoing concerns by members of the stakeholder community regarding implementing these rules. Implementation of these regulations is required by current law and implementation of this law is currently over one year late.

The Subcommittee may wish to ask the board to provide information on how it plans to proceed in implementing AB 885.